

**COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE  
KENT COUNTY COURTHOUSE  
DOVER, DELAWARE 19901  
PHONE: (302) 739-4618**

**CHARLES W. WELCH, III  
JUDGE**

June 30, 2011

Mr. Tony J. Blane  
5 Coverly Court  
Dover, DE 19904

Frederick H. Schranck, Esq.  
Deputy Attorney General  
Department of Transportation  
P O Box 778  
Dover, DE 19903

RE: Tony J. Blane v. Division of Motor Vehicles  
C.A.No.: CPU5-10-001253  
DMV Appeal  
Decision on Appeal from the Division of Motor Vehicles

Dear Mr. Blane and Mr. Schranck:

This action is a civil appeal that has been filed by Tony Blane ("Appellant") from a decision of the State of Delaware Division of Motor Vehicles ("DMV"), dated April 15, 2010, suspending his driver's license for a period of one year pursuant to 21 *Del. C.* § 2733(a)(5) and 21 *Del. C.* § 2751(a) and (b) for fraudulently misrepresenting his identity while attempting to obtain a driver's license. Appellant contends that the DMV investigator's testimony regarding evidence generated by DMV's facial recognition software should not have been considered by the hearing officer in making her decision. In addition, the appellant argues that the hearing officer considered irrelevant and unauthenticated evidence, including evidence outside of the record, in making her decision and lacked substantial evidence to find that he committed fraud. DMV contends that the hearing officer's reliance on the facial recognition software was appropriate. DMV also argues that the hearing officer's factual findings and conclusions of law were

supported by substantial evidence and that her consideration of facts outside of the record in making her decision was harmless. This correspondence serves as the Court's decision that the facts in the record are sufficient to support the hearing officer's conclusion that the appellant committed fraud while attempting to obtain a drivers license in violation of 21 *Del. C.* § 2751(a) and (b). Therefore, DMV's decision to suspend his driver's license is affirmed.

### **FACTS**

On February 15, 2010, DMV sent a letter to the appellant notifying him that it believed that he fraudulently obtained a driver's license and that it was suspending his driver's license. Appellant requested that a hearing be held for this matter. A fraud hearing ("the hearing") was held on April 1, 2010.

The investigator presenting DMV's case at the hearing set forth evidence generated from DMV's facial recognition software. The investigator indicated that she was trained on the software by a DMV fraudulent document expert. Essentially, the software compares a "template" of an individual's face to all of the photographs found in the DMV database. If the software concludes that two photographs are of the same individual, it determines whether the demographic information of the individuals in the photographs is identical. If this is the case, the software reports possible fraud.

The investigator also introduced DMV documents and images at the hearing which appeared to indicate that the appellant fraudulently obtained a driver's license in the name of "Tracy Servis." The images introduced included ones of "Tony Blane" and "Tracy Servis." The investigator testified that she examined the photographs and "specific points on the face were explored for comparison." The comparisons included "[t]he angle of the eyes as they intersect with the bridge of the nose; the bottom of the

ears as they intersect the face; the edges of the mouth as they intersect through the eyes and distinguishing features of the nose, the tattoo on the neck and piercing of the left eyebrow.”

The investigator also introduced DMV files of “Blane” and “Servis.” The files included license applications, document history lists for each license, and transmittals from Wisconsin and Texas. The Wisconsin and Texas transmittals were driver’s licenses allegedly issued to the appellant by those states. The Wisconsin license was in the name of Tony Blane and the Texas license was in the name of Tracy Servis. Appellant allegedly surrendered both of these licenses to DMV and obtained two Delaware driver’s licenses, one in the name of Tony Blane and one in the name of Tracy Servis.

The hearing officer found that the DMV investigator presented sufficient evidence to demonstrate that the appellant fraudulently misrepresented his identity while attempting to obtain a driver’s license. As a result, the appellant’s driving privileges were suspended for one year. Appellant appealed the hearing officer’s decision to this court.

### **NATURE AND STAGE OF THE PROCEEDINGS**

Pursuant to 21 *Del. C.* § 2733(a)(5), DMV may suspend a driver’s license, and the driving privileges, of any person without a hearing whenever DMV has “reason to believe” that such person has committed fraud in obtaining or attempting to obtain a driver’s license or identification card in violation of 21 *Del. C.* § 2751(a) or (b).<sup>1</sup>

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<sup>1</sup> Section 2751(a) and (b) of Title 21 provide as follows:

(a) *Fraud in obtaining or attempting to obtain driver’s license or identification card.*—A person shall not fraudulently obtain or attempt to obtain a driver’s license or an identification card by misrepresentation.

(b) *Fraud in application for license or identification card.*—A person shall not in any application for a driver’s license or identification card:

- (1) Use a false or fictitious name;
- (2) Make a false statement;

Once such a suspension is ordered, DMV must notify the person whose license has been suspended and offer them a hearing before the DMV. *See* 21 *Del. C.* § 2733(a)(5). After such a hearing, DMV may either rescind the order of suspension or, “good cause appearing therefor,” may continue the suspension of the license. *See* 21 *Del. C.* § 2733(b).

Should DMV decide after a hearing that good cause exists to suspend a person’s driver’s license for committing fraud while attempting to obtain a driver’s license, the person may appeal DMV’s decision to the Court of Common Pleas pursuant to 21 *Del. C.* § 2734 and Court of Common Pleas Civil Rule 72.1.

### **STANDARD OF REVIEW**

“The standard of review of an appeal from an administrative decision of the DMV is on the record, and, as such, is limited to correcting errors of law and determining whether substantial evidence exists to support the hearing officer’s factual findings and conclusions of law.”<sup>2</sup> “Findings of fact will not be overturned on appeal as long as they are ‘sufficiently supported by the record and are the product of an orderly and logical deductive process.’”<sup>3</sup> If this Court finds that substantial evidence exists in the record below, it “may not re-weigh and substitute its own judgment” for that of the Division of Motor Vehicles.<sup>4</sup> “[W]hen the facts have been established, the hearing officer’s evaluation of their legal significance may be scrutinized upon appeal.”<sup>5</sup> However, [t]he

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- (3) Conceal a material fact; or
  - (4) Otherwise commit a fraud.

<sup>2</sup> *Cesar v. Delaware Dep’t of Transp. Div. of Motor Vehicles*, CPU4-10-004958 (Del. Com. Pl. 2011) (citing *Lundin v. Cohan*, 2009 WL 188001, at \*2 (Del. Com. Pl.)).

<sup>3</sup> *Eskridge v. Voshell*, 1991 WL 78471, at \*2 (Del.) (citing *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972)).

<sup>4</sup> *Janaman v. New Castle County Bd. of Adjustment*, 364 A.2d 1241, 1242 (Del. Super. 1976) (citing *Cooch’s Bridge Civic Ass’n v. Pencader Corp.*, 254 A.2d 608 (Del. 1969); *Searles v. Darling*, 83 A.2d 96 (Del. 1951); *Fisher v. Pilcher*, 341 A.2d 713 (Del. Super. 1975)).

<sup>5</sup> *Voshell v. Attix*, 574 A.2d 264 (Del. 1990), 1990 WL 40028, at \*2 (Del.).

Division's understanding of what transpired is entitled to deference, since the hearing officer is in the best position to evaluate the credibility of witnesses and the probative value of real evidence."<sup>6</sup>

### **DISCUSSION**

Appellant sets forth two arguments for his appeal as follows:

(1) The appellant contends that the investigator's testimony regarding the facial recognition software should not have been considered by the hearing officer in making her decision. In support of this argument, the appellant contends that there was no evidence introduced at the hearing to prove the reliability and accuracy of the DMV investigator's testimony regarding the facial recognition software. In addition, the appellant argues that the investigator did not qualify as an expert witness to properly testify about the accuracy and validity of the software. Further, the appellant contends that the results generated by the software should not be considered in this case because a Delaware court has not declared the software to be valid.

(2) The appellant contends that the hearing officer considered irrelevant and unauthenticated evidence in making her decision, including evidence outside of the record. The Court interprets this argument to assert that the hearing officer lacked substantial evidence to find that the appellant committed fraud.

The appellee, DMV, contends that the hearing officer's reliance on the facial recognition software was appropriate, that the hearing officer's factual findings and conclusion of law were supported by substantial evidence and that the hearing officer's consideration of facts outside of the record in making her decision was harmless.

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<sup>6</sup> *Id.*

### **A. Facial Recognition Software**

It was within the hearing officer's discretion to consider the evidence generated by the facial recognition software at the hearing. Appellant's arguments regarding the software are not valid. DMV administrative hearing officers are not bound by the Delaware Rules of Evidence.<sup>7</sup> Therefore, it was not necessary for the investigator to provide expert testimony or lay a foundation to introduce information generated by the facial recognition software. Any screening device that DMV utilizes to uncover fraudulent conduct is permissible. Therefore, it was within the hearing officer's discretion to consider the information that the software produced, and the weight it should be given, in making her decision.<sup>8</sup>

### **B. Lack of Substantial Evidence**

The hearing officer's decision to suspend the appellant's driver's license with "good cause appearing therefor" was supported by substantial evidence.<sup>9</sup> "Substantial evidence has been defined to mean, 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'"<sup>10</sup>

The hearing officer considered many facts in making her decision. She found the evidence generated by the facial recognition software to be compelling. The hearing officer stated that the software "clearly indicates through comparison of facial features that the defendant did obtain two driver's licenses from the Delaware DMV." Furthermore, the hearing officer found that the photographic evidence presented by the

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<sup>7</sup> *Reams v. Div. of Motor Vehicles*, 1991 WL 35698, at \*2 (Del. Super.).

<sup>8</sup> See 21 Del. C. § 2733(a).

<sup>9</sup> Although the phrase "good cause appearing therefor" was not used in the hearing officer's decision, it is obvious from the decision and the transcript of the hearing for this matter that this was the standard she was using.

<sup>10</sup> *Olney v. Cooch*, 425 A.2d 610, 614 (Del. 1981) (citing *Consolo v. Fed. Mar. Comm'n*, 383 U.S. 607, 620 (1966)).

investigator supported the conclusion that the appellant was attempting to obtain a Delaware license under two different names. She noted that the individuals in the photographs had similar facial features and identical tattoos on the left side of their necks. In addition, the hearing officer found that the appellant, while appearing in person at the hearing, had similar facial features as those in the photographs as well as a tattoo on the left side of his neck.

Appellant's argument that the hearing officer considered irrelevant and unauthenticated evidence lacks merit. Appellant disputes the introduction of the Wisconsin and Texas transmittals at the hearing. As noted above, the hearing officer was not bound by the Delaware Rules of Evidence at the hearing. Thus, authentication of the documents was not necessary. Furthermore, even if the Rules of Evidence had governed the hearing, the Court finds that the transmittals are relevant to this case.

The evidence presented at the hearing reasonably permitted the hearing officer to find that the appellant fraudulently obtained a driver's license in the name of Tracy Servis from DMV. Furthermore, the Court finds that this conclusion could have been reached by the hearing officer even if she did not consider the evidence produced by the facial recognition software objected to by the appellant. Thus, the facts in the record are sufficient to support the hearing officer's decision that the appellant committed fraud under 21 *Del. C.* § 2751(a) and (b).

### **C. Hearing Officer's Conduct**

Although an overwhelming amount of evidence supports the finding that the appellant committed fraud under 21 *Del. C.* § 2751 (a) and (b), the Court deems it necessary to comment on the hearing officer's remarks during the hearing and her consideration of facts outside of the record in making her decision.

It appears from the transcript of the hearing that the hearing officer became argumentative with the appellant's attorney and repeatedly utilized the term "we" to make reference to DMV.<sup>11</sup> The Court emphasizes that administrative hearing officers have a duty to conduct proceedings with neutrality and proper decorum.<sup>12</sup> "That requirement is buttressed by the further principle that any tribunal permitted by law to hear and decide cases must not only be unbiased but must also avoid any appearance of bias."<sup>13</sup> Furthermore, it appears that the hearing officer relied on facts in her decision that were not found in the record.<sup>14</sup> It is not appropriate for hearing officers to consider facts outside of the record in making their decisions.

While the hearing officer's conduct in this regard was improper, the Court finds that it was harmless. The hearing officer's conclusion that the appellant fraudulently obtained a driver's license in the name of Tracy Servis from DMV was reasonable and was supported by substantial evidence in the record.

### **CONCLUSION**

"This Court is required to review the administrative decision of the DMV to: 1) correct errors of law and 2) determine whether substantial evidence of record exists to support the findings of fact and conclusions of law."<sup>15</sup>

The facts in the record are sufficient to support the hearing officer's decision that the appellant committed fraud under 21 *Del. C.* § 2751(a) and (b). Therefore, the Court

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<sup>11</sup> See pages number 17 through number 21 of the hearing transcript.

<sup>12</sup> *Blakeney v. Shahan*, 2002 WL 31999359, at \*1 (Del. Com. Pl.) (citing *Hyson v. Montgomery County Council*, 242 Md. 55, 217 A.2d 578, 588 (1966)).

<sup>13</sup> *Id.* (citing *Gardner v. Repasky*, 434 Pa. 126, 252 A.2d 704, 706 (1969)).

<sup>14</sup> For example, in her decision, the hearing officer refers to evaluations of face recognition systems by the National Institute of Standards and Technology that were not referenced in the record. She also references DMV procedures for taking pictures that were never introduced as evidence or discussed on the record.

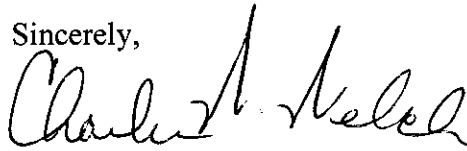
<sup>15</sup> *Cesar v. Delaware Dep't of Transp. Div. of Motor Vehicles*, C.A. No. CPU4-10-004958 (Del. Com. Pl. 2011).



finds that the suspension of the appellant's driver's license pursuant to 21 *Del. C.* §2733 was supported by substantial evidence and Delaware law. It is affirmed.

**IT IS SO ORDERED.**

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" being the most prominent.

Charles W. Welch, III

CWW:mek